



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,298	12/18/2001	Matthew B. Donatucci	ATMI-514	1697
25559	7590	09/02/2005	EXAMINER	
ATMI, INC. 7 COMMERCE DRIVE DANBURY, CT 06810			BUEKER, RICHARD R	
			ART UNIT	PAPER NUMBER
			1763	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/022,298	DONATUCCI ET AL.	
	Examiner	Art Unit	
	Richard Bueker	1763	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: none.
- Claim(s) objected to: 5.
- Claim(s) rejected: 1-4, 6-14 and 25-28.
- Claim(s) withdrawn from consideration: 15-24.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

  
 Richard Bueker  
 Primary Examiner  
 Art Unit: 1763

Art Unit: 1763

Continuation of 3. NOTE: Each of the proposed changes to claims 1, 2, 7, 9, 10 and 25 raise new issues.

Continuation of 11. NOTE: A declaration filed after final rejection is normally considered to be a new issue and therefore not entered. It is noted, however, that MPEP 715.09 indicates that an exception to this rule is when the declaration is submitted with a first reply after final rejection for the purpose of overcoming a new ground of rejection made in the final rejection. The Donatucci Declaration filed August 8, 2005 was submitted with a first reply after final rejection for the purpose of overcoming a new ground of rejection made in the final rejection, and therefore this Declaration has been entered.

The Donatucci Declaration filed on August 8, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Spahn (6,237,529) reference.

The Declaration does not contain an allegation that the acts relied upon to establish the date prior to the Spahn reference were carried out in this country or in a NAFTA country or a WTO member country. See MPEP 715.07(c).

Also, the Declaration refers to pages 1-5 from an Invention Disclosure Document (IDD) as Exhibit I, but 6 pages of IDD forms were submitted. Two copies of page 2 of an IDD were included, but one copy of page 2 was signed, while the other copy of page 2 was unsigned. Also, the Declaration quotes from page 2 of an IDD, and it's not clear which copy of page 2, the signed copy or the unsigned copy, is intended to be referred to in the Declaration of August 8, 2005. Regarding the signed copy of page 2 of an IDD, it is noted that the photograph on this page isn't legible.

Art Unit: 1763

Also, the Declaration is by less than all the named inventors of the patent application, but it is not shown that less than all named inventors of the application invented the subject matter of the claims under rejection. See MPEP 714.04 section I.

Also, the Declaration does not clearly specify that the blacked out dates on the Invention Disclosure Document (referred to in the Declaration as Exhibit 1) are prior to March 3, 2000, which is the filing date of Spahn (6,237,529). MPEP 71507 section II states that if the applicant merely alleges that the acts referred to occurred before a date, then that date must be specified. It is noted that paragraph 5 of the Declaration refers to "the Effective Date identified in Paragraph 3 of this Declaration", but paragraph 3 of the Declaration identifies two different dates, each of which is a type of an effective date. Also, the phrase "the Effective Date" in line 3 of paragraph 4 of the Declaration doesn't clearly specify which date or what date is intended. Therefore, the particular date intended is not sufficiently specified as required. Without clearly specifying a date as required, the significance of the Declaration can't be determined.

It is noted also that both Spahn and Greer were cited to teach that a screening means on a vacuum evaporation crucible should be sealed to the crucible. If Spahn were to be removed from the prior art, the rejected claims would continue to be rejected over the remaining references.